IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO.437 OF 2002

Jagdish Chandra Malhotra (HUF) .. Appellant

v/s.

1. The Assistant Commissioner of
Income-tax, Circle 9(3), Mumbai
& anr. ... Respondents

Mr.J.D.Mestry i/by M/s.Mahendra Patel & Associates
for appellant.

Mr.Vijay Kantharia i/by Mr.P.Kapur for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 17th September, 2004

P.C.

Heard.

2. The assessee had a flat at Delhi. He entered into an agreement dated 17.4.1986 for sale of the said flat for a consideration of Rs.45,00,000/-. The assessee received a sum of Rs.30,00,000/- on the date of execution of the agreement viz. 17.9.1986 and handed over possession to the purchaser. The conveyance was agreed to be executed subsequently and balance consideration of Rs.15,00,000/- was to be paid by the purchaser to the assessee at the time of registration of the conveyance deed. The balance payment of Rs.15,00,000/- was received by the assessee on

1.7.1987. The assessee did not disclose any capital gains for the assessment year 1987-88 or 1988-89. According to the assessee no chargeable arises to capital gains in respect of the said transaction. The Commissioner of Income-tax in exercise of the power under section 263 revised the order of the assessing officer holding the same as prejudicial to the interest of the revenue and levied capital gains on the sale of the said flat.

3. The aforesaid facts which are not in dispute would clearly show that upon receipt of the balance consideration of Rs.15,00,000/- on 1.7.1987 and that the possession was already retained by the purchaser, the transfer of the flat within the meaning of Income Tax Act had taken place in the accounting year relevant to the assessment year 1988-89 and the liability of the capital gains was incurred by the assessee in the assessment year 1988-89.

4. To our specific question to the learned counsel for the assessee to tell us the date on which the conveyance was registered, there was no answer.

5. The judgment of the Supreme Court in Alapati Venkataramiah v. Commissioner of Income-Tax, Hyderabad, 57 ITR 185 relied upon by the learned counsel for the appellant has no application to the

facts of the present case.

6. The view of the Tribunal is not vitiated by any legal infirmity.

7. No substantial question of law arises in this appeal. Hence, dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)